srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7157 OF 2006.

Shriram Banaji Kadam. ..Petitioner.

Versus.

Union of India and others...Respondents.

Mr. M. S. Lagu for the petitioner.

Mr. L. S. Shetty for the respondent nos. 1 to 3.

CORAM: S. B. MHASE &
R.S.MOHITE, JJ.

DATE: APRIL 11, 2007.

P.C.

1. Heard. The petitioner was working as a mason with the Border Roads Organisation - respondents. He went on leave and thereafter did not return after the leave was over. Therefore, charges were framed against him. Since he was not available notices were given to him. Public notice was given, and thereafter, since he did not report to the respondent no.2, ultimately the order of terminating the service of the petitioner was passed. The petitioner preferred an appeal as against that order. That appeal has been rejected on the ground of limitation. Now, the petitioner has come with a case that he was suffering from mental disability and in view of Section 24 of the Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act (1 of 1996) he should have been absorbed in some other service and tried to rely upon **Shivaji s/o Vishwanath Dongre v/s. State of Maharashtra and others** reported in **2006(1) Mh.L.J. 417**. Learned counsel for the respondent opposed the petition and submitted that the question of disability does not arise in the present matter and the petitioner was not suffering from any disability. According to him he was not recruited as a disable person with the respondent, and the petitioner is simplicitor an absconder from the services of the respondent, and accordingly his services have been terminated in accordance with the Rules and Regulations.

2. What we find is that the petitioner is a deserter from Army and at an eleventh hour an attempt is being made to show that he is suffering from mental disability. In fact he should have informed the respondent after his leave is over in respect of his illness. But on the contrary we find that the enquiry was required to be completed in the absence of the petitioner, since he was not available and therefore a public notice was also required to be issued. That shows the character of the petitioner as a deserter. We find that in the matter of the Border Roads Organisation under

the Army such types of indiscipline cannot be tolerated when they are dealing with the borders of the country. We also record our finding that the case which is sought to be relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case. We refrain to entertain this petition. Petition is hereby rejected.

(R.S.MOHITE, J.) **(S.B.MHASE, J.)**